

**BASS, BERRY & SIMS PLC**

A PROFESSIONAL LIMITED LIABILITY COMPANY  
ATTORNEYS AT LAW

R. DALE GRIMES  
TEL: (615) 742-6244  
FAX: (615) 742-2744  
dgrimes@bassberry.com

AMSOUTH CENTER  
315 DEADERICK STREET, SUITE 2700  
NASHVILLE, TN 37238-3001  
(615) 742-6200

www.bassberry.com

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February 22, 2002

**VIA HAND DELIVERY**

Mr. K. David Waddell  
Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243

**Re: *Petition to Permanently Revoke Certificate of Public Necessity to Operate a Telecommunications Company & Related Services for CenturyTel of Ooltewah-Collegedale, Inc. d/b/a CenturyTel Corporation, Inc., LLC, 100 CenturyTel Drive, Monroe, LA 71203, 318-388-9000***  
***TRA Docket No. 02-00058***

Dear Mr. Waddell:

Enclosed please find the original and 13 copies of the Motion to Dismiss to be filed on behalf of CenturyTel of Ooltewah-Collegedale, Inc. in the above-referenced docket. Also enclosed is an additional copy of the Motion to Dismiss, which I would appreciate your stamping as "filed," and returning to me by way of our courier.

Should you have any questions with respect to this filing, please do not hesitate to contact me.

Very truly yours,



R. Dale Grimes

RDG/gci

Enclosures

cc: Mr. Michael Van Wies  
Ms. Susan Smith

POSTED  
2/22/02

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

**IN RE:**

**COMPLAINT OF MICHAEL VANWIES  
AGAINST CENTURYTEL OF  
OOLTEWAH-COLLEGE DALE, INC.**

**Docket No. 02-00058**

**MOTION TO DISMISS**

Comes the Respondent, CenturyTel of Ooltewah-Collegedale, Inc. ("CenturyTel") and moves for the dismissal, with prejudice, of the above styled contested case and would show the Tennessee Regulatory Authority ("TRA") as follows:

**I. Petitioner's Filing Should be Dismissed Because it Fails to State a Claim for Which Revocation of CenturyTel's Certificate by the TRA May be Granted.**

Petitioner's filing should be dismissed because it fails to state a claim upon which relief may be granted. TRA Rule § 1200-1-2-.03(2)(e). Petitioner fails to allege any legal basis whatsoever for permanent revocation of CenturyTel's certificate of public convenience and necessity ("Certificate"), and he fails to allege any facts which, even if true, could be a lawful basis for such action by the TRA:

**(1) Petitioner's first allegation states:**

You can not get access to repeat dialing feature by dialing \*66 or 1166, on a pay-per-use basis, even if you are physically challenged, disabled, sick, injured, or elderly. You have to buy the feature for \$7/month, plus taxes and fees, then you have all of the \*66 or 1166 you want. Compl. p. 2, ¶ 1.

*Response:* Even if this allegation were true, it fails to state a claim for which relief may be granted because CenturyTel is under no obligation to provide this service. The allegation is also demonstrably false. CenturyTel has offered Repeat Dial on a usage sensitive basis since

July 2, 2001. Rates and charges associated with the service can be found in CenturyTel's tariff. See TRA Tariff 1, Section C12, Original Sheet No. 34F, C12 Miscellaneous Services, C12.19. Advanced Calling Services, C12.19.4. Rates and Charges. As shown, Repeat Dial is available at the rate of \$.50 per use and can be easily accessed by dialing \*66. *Id.*

(2) Petitioner's second allegation states:

You can not get access to the call return feature, (the number that called you) by dialing \*69 or 1169, on a pay-per-use basis, even if you are physically challenged, disabled, sick, injured or elderly. You have to buy the feature for \$7/month, taxes and fees, and you can have all of the \*69 or 1169 you want. Compl. p. 2, ¶ 2.

*Response:* Even if this allegation were true, it fails to state a claim for which relief may be granted because CenturyTel is under no obligation to provide this service. The allegation is also demonstrably false. CenturyTel has offered Call Return on a usage sensitive basis since July 2, 2001. Rates and charges associated with the service can be found in CenturyTel's tariff. See TRA Tariff 1, Section C12, Original Sheet No. 34F, C12 Miscellaneous Services, C12.19. Advanced Calling Services, C12.19.4. Rates and Charges - Usage Sensitive Features. As shown, Call Return is available at the rate of \$.50 per use and can easily be accessed by dialing \*69. *Id.*

(3) Petitioner's third allegation states:

If you have Caller-ID, with name and number, you pay \$7/month for the feature, but you can not get anonymous call rejection activation by dialing \*77 or 1177, or to deactivate anonymous call rejection, by dialing \*87 or 1187. Some consumers, who buy Caller-ID, want the anonymous call rejection feature, and CenturyTel refuses to activate it in the switch. Compl. p. 2, ¶ 3.

*Response:* Even if this allegation were true, it fails to state a claim for which relief may be granted because CenturyTel is under no obligation to provide this service. The allegation is also demonstrably false. CenturyTel has offered Anonymous Call Rejection since July 2, 2001. Rates and charges associated with the service can be found in CenturyTel's tariff. See TRA

Tariff 1, Section C12, Original Sheet No. 34F, C12 Miscellaneous Services, C12.19. Advanced Calling Services, C12.19.4. Rates and Charges. As shown, Anonymous Call Rejection is available at a rate of \$1.50 per month. *Id.* After implementation, Anonymous Call Rejection is activated by dialing \*77, and deactivated by dialing \*87.

(4) Petitioner's fourth allegation states:

If you have CenturyTel's version of a wire maintenance plan called Wire Watch [sic] you pay approximately \$3.99/month plus tax and fees. The plan used to cost \$0.99 and went up not too long ago. However the consumer will get hit with a "Truck Roll Service Fee". If you are physically challenged[,] disabled, sick, injured, or elderly, and you have a modem, cordless phone, fax machine, alarm system, or medical device plugged into the telephone network in your home, CenturyTel will not sell you a maintenance plan in addition to it's [sic] Wire Watch [sic] for an additional fee. All of the other companies we spoke with said they have several maintenance plans, some of which carry a higher monthly fee to cover such an event. To me that is outright discrimination against our community, and is also a "Quality of Life Issue." Compl. p. 2, ¶ 5.

*Response:* This allegation fails to state a claim for which relief may be granted. WireWatch is a deregulated service offered by CenturyTel. Effective January 1, 1987, subscribers became responsible for the maintenance of wiring inside their premises. Although under no obligation to do so, CenturyTel offers WireWatch as a customer service. WireWatch's small monthly cost covers the dispatch of a technician (i.e., "the truck-roll fee"), troubleshooting and repairs for most telephone service interruptions that occur as a result of problems with wiring and modular jacks owned by the subscriber. While a WireWatch enhancement which includes maintenance of some customer premises equipment is being evaluated, the current WireWatch service does not cover repairs to, or problems caused by, a subscriber's personal property such as home computers, satellite systems, "fax machines, alarm systems, or medical devices." Compl. p. 2, ¶ 5.

Regardless of CenturyTel's service offerings in this deregulated area, subscribers are free to purchase maintenance plans or repair services for their wiring and equipment from other companies, just as they are free to choose whom to hire to repair their washing machines, televisions, and automobiles. A competitive market exists for all of these services.

(5) Petitioner's fifth allegation states:

Billing is another topic we need to focus on. Enclosed you will see copies of several of my CenturyTel bills, some of which are Single-Line bills, and some have two lines on one bill, (combined billing). The bills are confusing and with little detail. We called the CenturyTel Residence Service Center, and inquired about the details and was [sic] told, "Think of it like this, if I was Ford and you wanted a Model-T, you can have it in any color you want. However it only comes in black". All of our bills are generic. I asked about the increase in the FCC Line Charge, which went from \$3.50/month to \$5.00/month as of January 2002, and was told "you get what you pay for"....

Enclosed you will find a copy of one of my BellSouth bills, which is a Foreign Exchange Line. As you can see it is plainly detailed to the Penney [sic]. Not too confusing, plain as day... Compl. p. 2, ¶¶ 6,7.

*Response:* This allegation fails to state a claim for which relief may be granted. Petitioner fails to allege a single way in which his CenturyTel bill violates TRA requirements. Furthermore, the bills which Petitioner attaches to his complaint prove conclusively on their face that CenturyTel meets all billing standards required by the TRA. See TRA Rule § 1220-4-2-.10 ("Bills to customers shall be rendered regularly and shall contain a listing of all charges."). While Petitioner may prefer the design, color, or level of detail of other bills he receives or may have seen, this is not a legitimate basis for seeking the revocation of a telephone company's Certificate.

Furthermore, as part of its continual efforts to further improve its services and equipment, CenturyTel is in the process of developing a new billing system which is expected to be available

in Ooltewah in November 2002. This new system will provide a level of itemization which even further exceeds the standard of detail presently required by the TRA. In the meantime, in accordance with TRA requirements, CenturyTel continues to provide customers with a more detailed billing statement upon their request. *Id.* Petitioner acknowledges this very fact in his January 31, 2002 filing. *See* Jan 31, 2002 Filing ¶ 1. ("I am enclosing a document I received from CenturyTel explaining my detailed billing for the residential monthly service at my home."). *See also* Enclosure to Jan. 31, 2002 Filing.

(6) Petitioner's sixth allegation states:

... Also the reason for getting the FX Line in a residence is that CenturyTel does not have enough trunks. Certain times of the day and on weekends you can't even complete calls into City of Chattanooga Tandem. So we bear an additional expense, and let CenturyTel control my family's local and long distance calling pattern. So now we by-pass their local DMS-100 switch, and get BellSouth dial tone in my home. We call when and where we want to without interference. Compl. p. 2, ¶ 7.

*Response:* This allegation fails to state a claim for which the sought relief may be granted. Trunks to the Chattanooga tandem are jointly provided by CenturyTel and BellSouth. The call completion rate CenturyTel and BellSouth are required to achieve is set forth in TRA rules. *See* TRA Rule § 1220-4-2-.37(b) (requiring the "completion of 97% of local dialed calls without encountering an equipment busy condition (blockage)."). TRA regulations provide appropriate avenues for customer complaints about service quality, but nowhere do they authorize the revocation of a telephone company's Certificate for the reasons outlined by the Petitioner. *See* TRA Rules §§ 1220-4-2-.02--.58.

Furthermore, Petitioner's allegation is baseless. CenturyTel continually monitors all its trunks for blockage and receives both an hourly and a daily report showing busy conditions or troubles affecting any trunk group. *See* T.R.A. Rule § 1220-4-2-.34(3) (requiring that utilities

measure service levels to ensure that standards are being met). BellSouth also continually monitors these trunk groups. *Id.* When either carrier discovers busy conditions on trunk groups to the Chattanooga Tandem, the carrier immediately coordinates the installation of additional trunks. CenturyTel has not experienced any recent trunk blockages which violate TRA call completion rate standards. *See* TRA Rule § 1220-4-2-.37. In accordance with TRA regulations, CenturyTel and BellSouth provide quarterly reports to the TRA which document rates of call completion. *See* TRA Rule § 1220-4-2-.34(4)(requiring quarterly formal reports and additional reports when surveillance reveals service problems). These TRA records confirm that CenturyTel and BellSouth are meeting or exceeding the rate of call completion required by the TRA. *Id.*

(7) Petitioner's seventh allegation states:

Consumer Fraud is another sticking point. CenturyTel sells a DSL product for approximately \$49.95/month plus taxes and fees. Download speeds are said to be up to 512-kilobits per second, and upload speeds are up to 256-kilobits per second. The general consensus, here in Tennessee, is that for \$49.95/month you get 1.5-megabits per second download, and upload speed up to 256-kilobits per second, which is the normal industry standard. You get three times the speed for the same price.

The reason that CenturyTel is 'Capping Data Speed' is that it costs too much to transport and provision the loop, per their Engineering and Marketing groups. We inquired when they will fix the disparity and be like everyone else? They replied that they need to study how much more they will have to charge the customer in order to cover their expenses of paying the long distance providers to back haul the traffic to and from Louisiana and Arkansas where their mainframes are located. Then they will think of giving their DSL customers the full bandwidth of 1.5-megabits on the down load side of the product. Until then you can use it the way it is or go somewhere else. We are lucky here to have Comcast Cable modem service, the same price for at least 6-times the speed of what CenturyTel is offering, without problems. We also have SONET type of Route Diversity, of which CenturyTel does not have. Compl. p. 2, ¶ 8; p. 3, ¶ 1.

*Response:* This allegation fails to state a claim for which relief may be granted. First, DSL Internet Service is a bundled deregulated service. Second, CenturyTel does not provide Internet Services at all. Petitioner's claims are presumably against CenturyTel Internet Services, LLC, an independent service provider (ISP) that is a separate legal entity from CenturyTel. Although Petitioner desires that CenturyTel Internet Services, LLC "be like everyone else," Compl. p. 3, ¶ 1, businesses in a deregulated market are free to establish their own product lines and set their own prices. Likewise, customers are free to choose between products and services based on price, quality, and any other factors that may be important to them as individuals. Petitioner acknowledges that competition for internet services exists in his area and that he has, in fact, exercised his freedom to choose an internet service from one of CenturyTel Internet Services LLC's competitors. Compl. p. 3, ¶ 1.

Furthermore, although Petitioner initially makes an allegation of consumer fraud, his complaint plainly reveals that CenturyTel Internet Services, LLC provides services exactly as it advertises them. The petitioner's preference for receiving deregulated services even cheaper than they are fairly advertised and provided does not amount to consumer fraud or any other unlawful activity.

(8) Petitioner's eighth allegation states:

SONET Ring/Route Diversification: Security issue in the community. Sometime during 1997 or so, some criminals held-up and robbed a convenience store on old US-11, and Apison Pike. The criminals cut a riser cable going up a pole next to the gas station, and thought it was the telephone service to the store. What they did was knock out the only route into the Ooltewah-Collegedale Central Office. It was a fiber cable, and as told by residents, service was out for up to 10-days. The Hamilton County Sheriff set-up a radio relay station in the CO, so emergency and fire rescue calls were processed. All cellular service providers were out, since their T-1 circuits were out, as well as all traffic into



the Chattanooga City Tandem. Finally CenturyTel called in BellSouth to fix the break. It seems the contractors that CenturyTel hires are real top-notch experts on doing restoration work. But you get what you pay for. Compl. p. 3, ¶ 2.

*Response:* Even if the allegation were true, it fails to state a claim for which relief may be granted because CenturyTel is under no obligation to provide route diversity. The allegation is also demonstrably false for two reasons. First, CenturyTel has provided a fiber ring and route diversification since January 10, 2002. In the last five years alone CenturyTel has placed 24.25 miles of fiber optic cable bringing the majority of CenturyTel's customer base within a ring architecture which can survive a cable cut at any point. This network also includes redundant fiber trunk routing to BellSouth. This makes CenturyTel's linkage to this carrier almost indestructible. Second, the 1997 fiber break described by Petitioner occurred to facilities owned by BellSouth, not CenturyTel. The Petitioner's own allegation acknowledges that the break occurred more than five years ago and that services to the Chattanooga tandem were interrupted while services within Ooltewah remained operational. Furthermore, BellSouth made the repairs because they were fixing their own facilities.

**II. Petitioner's Filing Should be Dismissed Because CenturyTel May Not Transfer or Abandon Its Certificate.**

Petitioner's filing fails to set forth a claim upon which relief may be granted even if it were interpreted as a request CenturyTel's to abandon its Certificate to another telecommunications provider. *See* Complaint, p. 3, ¶ 4. CenturyTel is barred in this case as a matter of law from abandoning its Certificate since it is a provider with carrier of last resort obligations. TRA Rule § 1220-4-8-.05(1); T.C.A. § 65-4-201(c). Nor can Petitioner's filing be construed as a request to transfer CenturyTel's Certificate. TRA rules require that a Certificate may only be transferred to another provider who meets the requirements of T.C.A. § 65-4-

201(c). TRA Rule § 1220-4-8-.05(2). That statute requires a telecommunications provider to demonstrate that it has the financial, managerial, and technical wherewithal to provide the applied for services before it may receive a Certificate. T.C.A. § 65-4-201(c). Neither BellSouth nor Sprint nor any other eligible telecommunications company is a party to this case or is applying to receive the respondent's Certificate. Petitioner, although a party, has not properly applied for, nor is he eligible to receive, CenturyTel's Certificate. He is neither a telecommunications provider nor has he demonstrated that he has "sufficient managerial, financial and technical abilities" to assume CenturyTel's service area as required by T.C.A. § 65-4-201(c).


**III. CenturyTel's Certificate Should Not Be Revoked Because CenturyTel Continues to Well Serve the Customers of Ooltewah.**

CenturyTel's commitment to its customers is apparent from its customer service complaint record and its history of sustained capital investment in the community's telecommunications system. Last year CenturyTel received only six complaints from Ooltewah customers, only one of which was a TRA complaint which dealt with a regulated service. In the past four years alone, CenturyTel has invested more than \$7.5 million in capital improvements. This year, more than \$1.36 million in additional upgrades are planned. CenturyTel's regulated services are all tariffed and approved by the TRA. CenturyTel looks forward to continuing to provide its customers with outstanding service and systems in the years to come.

**IV. Conclusion.**

For all the forgoing reasons, CenturyTel prays for the dismissal with prejudice of Petitioner's filing and for such other relief to which it may be entitled.

Respectfully submitted,

  
R. Dale Grimes (#6223)  
Ross I. Booher (#19304)  
BASS, BERRY & SIMS PLC  
AmSouth Center  
315 Deaderick Street, Suite 2700  
Nashville, TN 37238-3001  
(615) 742-6200

*Counsel for CenturyTel of Ooltewah-  
Collegedale, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Motion to Dismiss has been served via United States mail, postage prepaid, on this the 22<sup>nd</sup> day of February, 2002, upon the following:

Michael Van Wies  
8504 Horseshoe Bend Lane  
Ooltewah, TN 37363-5627.

